

ORIGINAL

NO. 2018-04586J

IN THE INTEREST OF

CHARLOTTE BRIGHT
MASON BRIGHT

CHILDREN

§ IN THE DISTRICT COURT OF
§
§ 315TH JUDICIAL DISTRICT
§
§
§ HARRIS COUNTY, TEXAS

FILED
Chris Daniel
District Clerk
NOV 20 2018
Time: 3:00 p
By: [Signature]
Harris County, Texas
Deputy

ORDER ON MELISSA AND MICHAEL BRIGHT'S MOTIONS FOR SANCTIONS

On October 3, 2018, Respondents Melissa Bright ("Melissa") and Michael Bright ("Michael"), and collectively ("The Brights"), filed motions asking this Court to impose sanctions against Petitioner, Texas Department of Family and Protective Services (TDFPS), alleging violations of Rule 13 of the Texas Rules of Civil Procedure. Among other allegations, The Brights accuse TDFPS of unlawfully removing their children Charlotte Bright ("Charlotte") and Mason Bright ("Mason") (collectively "children"), from their home on September 19, 2018. Moreover, they accuse TDFPS of deceiving this Court and the parties involved by improperly approaching this Court *ex parte* on September 19, 2018, in order to seek groundless temporary managing conservatorship of their children. The Brights allege that on September 19, 2018, TDFPS knew that the allegations and factual contentions contained in their pleading had no evidentiary support and contained several false factual assertions. The Brights also claimed TDFPS intentionally waited until after close of business to remove the children in order to prevent the Brights from contacting the court or legal counsel to prevent the removal. The Brights further alleged that TDFPS failed to provide them a Notice of Removal or any legal paperwork evidencing the grounds for removal or which court had authorized the removal order, within the time limits established in the Texas Family Code. They likewise seek recovery of

reasonable and necessary expenses and legal fees and any other relief appropriate to prevent the alleged conduct from occurring in the future.

In their response to The Bright's *Motion for Sanctions*, TDFPS argues the following: 1) TDFPS is immune from Rule 13 Sanctions; 2) TDFPS did not sign any pleadings, so they may not be sanctioned under Rule 13; 3) TDFPS brought their pleading in good faith; 4) the Brights failed to prove the elements required for Rule 13 sanctions; and 5) the TDFPS suit was not brought for purposes of harassment.

A hearing on the *Motion for Sanctions* was held on October 26, October 29, November 5, November 7, and November 8, 2018.

After considering the Bright's *Motions for Sanctions*, the response filed by TDFPS to said Motion and following an exhaustive review of the record, the law and the guiding rules and principles thereof, along with the arguments of counsel, the Court hereby **GRANTS** Melissa Bright's Motion for Sanctions and Michael Bright's Motion for Sanctions for TDFPS's actions on September 19, 2018.

I. APPLICABLE LAW

A. THE COURT'S INHERENT POWER TO SANCTION

Rule 3.30 of the Texas Disciplinary Rules of Professional Conduct entitled "Candor Toward the Tribunal" imposes on an attorney the duty of candor toward a tribunal. *See* TEX. DISCIPLINARY R. PROF. CONDUCT 3.03. Courts presume that litigants and attorneys act in good faith and are forthcoming with necessary information. When litigants and their attorneys are not candid with a tribunal and intentionally obstruct the process, their actions significantly interfere with the court's core functions in the administration of cases, the exercise of its

jurisdiction, the administration of justice, and the preservation of the independence and integrity of the court and the judiciary as a whole.

Melissa and Michael Bright, seek sanctions under Rule 13 and Rule 215.2 of the Texas Rules of Civil Procedure. Rule 13 states that the "signatures of attorneys . . . constitute a certificate by them that they have read the pleading, motion or other paper; that to the best of their knowledge, information, and belief formed after *reasonable inquiry* the instrument is not groundless and brought in bad faith or groundless and brought for purpose of harassment." Tex. R. Civ. P. 13 (emphasis added). A groundless pleading is one that has no basis in law or fact and is not warranted by a good faith argument for the extension, modification, or reversal of existing law. Tex. R. Civ. P. 13; *GTE Comms. Sys. V. Tanner*, 856 S.W.2d 725, 730 (Tex. 1993).

A groundless pleading is not sanctionable under Tex. R. Civ. P. 13 unless it was brought in bad faith or for the purpose of harassment. *GTE*, 856 S.W.2d at 731. Bad faith is not simply bad judgment or negligence; rather, it is the conscious doing of a wrong for dishonest, discriminatory, or malicious purposes. *See Parker v. Walton*, 233 S.W.3d 535, 540 (Tex.App.-Houston [14th Dist.] 2007, no pet). Improper motive is an essential element of bad faith. *Id.* If a tribunal finds a party has filed with the court an instrument that violates Rule 13 of the Rules of Civil Procedure, the court "shall impose an appropriate sanction available under Rule 215." *See* Tex. R. Civ. P. 13.

Additionally, this Court has "all powers necessary for the exercise of its jurisdiction." TEX. GOV'T CODE §21.001(a). This Court has the duty to ensure that all "proceedings be conducted with dignity and in an orderly and expeditious manner and to control the proceedings so that justice is done." TEX. GOV'T CODE §21.001(a) & (b). In exercising its inherent powers this Court may assess monetary sanctions, and/or order the parties and counsel to take

certain actions, and/or use its criminal and coercive contempt powers.

This Court's power to assess sanctions against attorneys and parties for interfering with the core functions of the Court and for abuse of the legal process is not limited to those sanctions listed in Rule 215.2. In fact, the Court's power to assess sanctions for abuse of the legal process is not limited to that specifically conveyed in rules and statutes. Such power may be *implicit* in a particular rule or statute. *Koslow's v. Mackie*, 796 S.W.2d 700, 703 (Tex. 1990). Trial courts also have inherent powers on which they may call to administer justice and preserve their dignity and integrity. *Public Util. Comm 'n v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979). This power includes the ability to sanction bad faith conduct that occurs during the course of litigation. *Lawrence v. Kohl*, 853 S.W.2d 697, 700 (Tex. App. – Houston [1 Dist.], no writ); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509 (Tex. App. – Corpus Christi 1992, no writ). In *Kutch*, the court specifically held that Texas trial courts have the inherent power to sanction for abuses of the judicial process which may not be covered by rule or statute. *See Kutch*, 831 S.W.2d at 510. If a pleading, motion, or other paper is signed in violation of Rule 13, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction. TEX. R. CIV. P. 13, 215.2-b.

The choice of authorized sanctions is within the sound discretion of the trial court. *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex.1991) (orig. proceeding). However, any sanction imposed by the trial court must be just. *See* TEX. R. CIV. P. 215(b); *TransAmerican*, 811 S.W. 2d at 917. There is a two prong standard for determining whether an imposition of sanctions is “just.” First, a direct relationship must exist between the offensive conduct and the sanction imposed. This means that a just sanction must be directed

against the abuse and toward remedying the prejudice caused the innocent party. Depending on the individual to whom the offensive conduct is attributable, either the attorney or the party may be sanctioned. Second, just sanctions must not be excessive. A sanction should be no more severe than necessary to satisfy its legitimate purposes. The court must consider the availability of less stringent sanctions and whether such lesser sanctions would fully promote compliance.

A trial court's decision to impose sanctions will not be overruled on appeal unless an abuse of discretion is shown. *Randolph v. Walker*, 29 S.W.3d 271, 274-75 (Tex.App.-Houston [14th Dist.] 2000, pet. denied), quoting *Falk & Mafield L.L.P. v. Molzan*, 974 S.W.2d 821, 824 (Tex.App.-Houston [14th Dist.] 1998, pet. denied); see also *Zarsky v. Zurich Management, Inc.*, 829 S.W.2d 398, 399 (Tex.App.-Houston [14th Dist.] 1992, no writ). The test for abuse of discretion is "whether the court acted without reference to any guiding rules and principles," or "whether the act was arbitrary or unreasonable." *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex.1985).

B. CONSTITUTIONAL PROTECTIONS

- 1) Courts have singled out for heightened protection that "most essential and basic aspect of familial privacy – the right of the family to remain together without the coercive interference of the awesome power of the state." *Hodorowsld v. Ray*, 844 F.2d 1210, 1216 (5th Cir. 1988) (quoting *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir.1977));
- 2) To ensure the rights of parents are protected when the safety of a child is at stake, Texas law has held that "[a]ctions which break the ties between a parent and child 'can never' be justified without the most solid and substantial reasons." *Wiley v. Spratan*, 543 S.W.2d 349, 352 (Tex. 1976) (quoting *State v. Deaton*, 54 S.W. 901 (Tex. 1900));
- 3) The fourth amendment to the United States Constitution protects people from warrantless government intrusions and warrantless searches and seizures and are presumptively unreasonable unless there is consent or exigent circumstances. *United States v. Gomez-Moreno*, 479 F.3d 350, 354 (5th Cir. 2007);

- 4) The fourth amendment to the United States Constitution regulates social workers' civil investigations. *Roe v. Tex. Dept. of Protective and Regulatory Services*, 299 F.3d 395, 401 (5th Cir. 2002).
- 5) In a due process context, "emergency circumstances mean circumstances in which the child is immediately threatened with harm. [T]he mere possibility of danger is not enough." *Gates v. Texas Department of Protective and Regulatory Services*, 537 F.3d 404 (5th Cir. 2008).

C. TEXAS FAMILY CODE

- 1) Texas Family Code Sec. 262.101, entitled "FILING PETITION BEFORE TAKING POSSESSION OF A CHILD", permits TDFPS to seek an emergency order authorizing it to take possession of children when there is an immediate danger to the safety of the child.
- 2) Section 262.201 of the Texas Family Code requires that for TDFPS to retain possession of a child it must present sufficient evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child; (2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home;

II. FINDINGS OF FACT

The Court has reviewed the evidence and assessed the weight and credibility of each witness's testimony and each admitted exhibit. Additionally, after careful consideration of the applicable law and guiding rules and principles thereof along with the arguments of counsel, the Court FINDS as follows:

A. FACTUAL BACKGROUND

- 1) The Texas Department of Family and Protective Services is a state agency charged with protecting children, the elderly, and people with disabilities from abuse, neglect, and exploitation;

- 2) The Texas Department of Family and Protective Services is often this state's last beacon of hope and safety for our most vulnerable citizens – abused children;
- 3) The Texas Department of Family and Protective Services has protected thousands of abused children in this state;
- 4) The natural right which exists between parents and their children is one of constitutional dimensions. See *Wiley v. Spratlan*, 543 S.W.2d 349,352 (Tex. 1976);
- 5) A parent's right to uninterrupted access to and care of her child ranks as "far more precious than property rights," see *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex.1985), and indeed is a "fundamental liberty interest protected by the Fourteenth Amendment." See *Stantosky v. Kramer*, 455 U.S. 745, 753 (1982);
- 6) Courts have singled out for heightened protection that "most essential and basic aspect of familial privacy – the right of the family to remain together without the coercive interference of the awesome power of the state." See *Hodorowski v. Ray*, 844 F.2d 1210, 1216 (5th Cir. 1988) (quoting *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir.1977));
- 7) Texas Law recognizes that a parent's right is not absolute. See Tex. Fam. Code, Title 5;
- 8) If there is an immediate danger to the safety of a child, TDFPS may seek an emergency order authorizing it to take possession of the child. See Tex. Fam. Code § 262.101; In situations in which there is an immediate danger to a child's safety and there is no time to seek a court order, Texas law provides that TDFPS may, in fact, take possession of a child without a court order. See Tex. Fam. Code § 262.104 (a)(1);
- 9) To ensure the rights of parents are protected when the safety of a child is at stake, Texas law has held that "[a]ctions which break the ties between a parent and child 'can never' be justified without the most solid and substantial reasons." See *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976) (quoting *State v. Deaton*, 54 S.W. 901 (Tex. 1900));
- 10) Texas law guarantees parents the right to a full adversary hearing if TDFPS has obtained possession of their child. See Tex. Fam. Code § 262.201;

- 11) Section 262.201 of the Texas Family Code requires that for TDFPS to retain possession of a child it must present sufficient evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child; (2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home;
- 12) On July 18 2018, Mason was injured after falling from a camping chair and hitting his head on the driveway of the Bright' family home;
- 13) Melissa standing feet away helping 2 year old Charlotte, immediately began providing first aid to Mason;
- 14) 911 was called and Mason was transported to Texas Children's Hospital – The Woodlands. From there, Mason was transferred to Texas Children's Hospital, Medical Center (TCH);
- 15) On July 19, 2018 a CT scan of Mason's head revealed two skull fractures. TCH alerted TDFPS of this result. An MRI and skeletal survey of Mason was completed, without result;
- 16) TDFPS initiated a safety plan by agreement with the Brights, listing Debra Verrill, the maternal grandmother, Deloris Jester ("Deloris") and Cierra Jester ("Cierra"), the paternal great aunt and paternal 2nd cousin, all as safety monitors in the Bright home;
- 17) On July 20, 2018 the MRI results showed bilateral subdural hemorrhaging in Mason skull, and confirmed the 2 separate skull fracture sites. TCH requested an ophthalmology consult and also a hematology consult for Mason;
- 18) Ophthalmology testing was not able to be fully completed, but scattered hemorrhaging was noted in Mason's left eye;
- 19) TCH social worker noted to TDFPS that the Brights are reacting appropriately to the news their son is injured and are asking appropriate questions;
- 20) Upon request of TDFPS, Charlotte was brought to TCH and given a complete skeletal survey which showed no signs of fracture;
- 21) On July 23, 2018, TCH social worker contact TDFPS supervisor Neisha Edwards

("Edwards"), and told her TCH was concerned Mason's injury may be non-accidental. The factors provided to TDFPS for this concern were:

- a. The subdural hemorrhaging had more blood than you would expect from such a short fall;
- b. The family reported one fall, but there are two fractures; and
- c. Hematology testing reports have not been completed to justify the excessive bleeding;

22) A physician's statement was signed on July 23, 2018, outlining the above concerns and was provided to TDFPS;

23) Edwards decided to change the agreed Safety plan that would have allowed the children to remain in their home and the parents to stay with them, as long as the safety monitor was present, to a Parental Child Safety Placement (PCSP). The PCSP required placement of the children outside the home;

24) On July 24, 2018, while waiting for Mason to go into surgery at TCH(to drill a hole in his head to alleviate swelling), Edwards presented the PCSP to the Brights and required them to name a placement that day, and required that the caseworker come to the hospital immediately to also sign the placement;

25) Under the time constraints imposed by Edwards, the Brights chose Melissa Frazier ("Frazier") the paternal grandmother. The Frazier's home is located approximately an hour and a half drive away from the Bright's home;

26) The TDFPS PCSP contained the following requirements:

- a. All contact between the Brights and their children must be supervised, to include requiring Frazier to accompany the Brights to all doctor appointments of the children; and
- b. TDFPS would make contact with the Bright family every 10 days;
- c. TDFPS would make face-to-face contact with the children every 30 days;

27) On August 2nd Mason was readmitted to TCH due to his wound not healing and swelling in his head. TDFPS was notified;

28) On August 9th, the Brights notified TDFPS caseworker Lavarvia Jones ("Jones") while he conducted his first visit to see the family since release from the hospital, that they needed to change the PCSP placement to the home of Deloris Jester;

29) Jones was told that the current PCSP was a hardship because of the distance between their home and the Frazier home; that the distance presented problems allowing Melissa to breastfeed Mason; that Mason's health has not improved and

that if they cannot get Mason calmed when he is upset, that it may cause Mason to need another surgery to have a permanent shunt place in his head;

- 30) On August 14, 2018, Jones and Edwards came to the Jester home to participate in a Family Team Meeting (FTM);
- 31) During the FTM, Edwards and Jones were provided the results of Mason's hematology testing, which were dated July 24, 2018 and showed that Mason had a blood disorder that caused him to bleed excessively;
- 32) Fraizier explained to Edwards that she wanted the PCSP to change because she did not have any help to take care of Mason, and that Mason required round the clock monitoring. Frazier told Edwards and Jones the doctors warned that if Mason gets upset and is not immediately calmed down, the pressure will build up in his head and cause his condition to worsen. The Brights echoed these problems to Edwards;
- 33) Melissa also complained that her ability to breastfeed was being hampered with the current PCSP, and that breastfeeding was always the easiest way to soothe Mason when he is upset. Melissa said that the stored breast milk supply was nearly depleted, and requested that she be allowed to stay overnight with Mason to help soothe him when he awakes upset;
- 34) Edwards and Jones agreed to the change of the PCSP, and approved the Jester home pending approval of the Program Director, Lashonna Beaudoin ("Beaudoin");
- 35) The FTM agreement, which was signed by Edwards and Jones, gave TDFPS a deadline on August 17, 2018 to approve the PCSP placement change, and August 19, 2018 as the deadline to effectuate the move of the children to the Jester' home;
- 36) Edwards and Jones saw Mason and Charlotte during the FTM;
- 37) TDFPS failed to approve the PCSP change on August 17, 2018;
- 38) The Bright, Frazier, and Jester families diligently contacted TDFPS on multiple occasions about the PCSP placement change over the period of time from August 17, 2018 until August 28, 2018;
- 39) TDFPS never approved the change of placement. TDFPS never communicated to the Bright, Frazier, or Jester families that the change of PCSP was denied; only that Beaudoin had not yet approved change;
- 40) On August 22, 2018, Jones sent a text message to Melissa stating the following:

“We did consult with legal and we do not have grounds for a removal, but we do have to offer you services. Would you guys be willing to work services through family base?”

- 41) On August 28, 2018, Michael Bright notified Jones that due to continued TDFPS inaction on the PCSP placement change, the fact TDFPS did not have legal grounds to remove the children; and the continued hardship the Frazier placement had on Mason and the Brights, that Bright family would no longer agree to follow the PCSP and were bringing their children back home;
- 42) According to Jones, he told his supervisor, Ms. Edwards, about Michael Bright's refusal to follow the PCSP. Jones also admitted he knew that the children had returned home back on “August 24th”;
- 43) TDFPS had no contact with the Bright family from August 28th 2018 until September 18, 2018;
- 44) On September 18, 2018, Jones sent a text message to Melissa asking how Mason was doing. Melissa replied with an update on Mason's medical condition and sent photos of him to Jones. Jones then asked whether Mason was with the Brights or with Frazier. Melissa replied that both children had been back with the Brights since August 28th, just as Jones had been told on that date;
- 45) Jones also set up a time with Melissa to come to their home to see the children at 5pm the following day, September 19, 2018;
- 46) Unbeknownst to Melissa, Jones and Edwards had staffed the case for removal with Beaudoin, who approved an emergency removal of both children. Beaudoin directed Jones to be at the legal department first thing on the morning of September 19, 2018;
- 47) On September 19, 2018 Jones went to the Harris County Attorneys Office (HCAO) to present his affidavit for removal of the children. While at the HCAO Jones logged into the TDFPS IMPACT database and either created or altered entries for events that occurred on August 20 and August 28, 2018;
- 48) The August 20 entry on the removal affidavit stated that Jones had informed Melissa on that date that the PCSP change would not be approved due to “concerns moving the child who has suffered multiple serious injuries.”
- 49) The August 28 entry on the removal affidavit mentioned that Mr. Bright alerted Jones that “the family would no longer be cooperating with the agency,” but made no mention of the crucial fact that Jones knew the children had been back in the Bright household for weeks and that, as Jones would later admit in direct

contradiction of his sworn affidavit, there was no danger to the children in the home.

- 50) Jones testified he intentionally did not inform the Brights he was going to court to seek an *ex parte* removal order of the Bright children.
- 51) The Brights credibly testified if they had known about the court hearing, they would have attended it and would have informed the court the children had been at home for 22 days, and that TDFPS was aware of those facts.
- 52) On September 19, 2018, TDFPS filed a *Original Petition for Protection of a Child for Conservatorship and for Termination in Suit Affecting the Parent-Child Relationship* with a supporting affidavit and appeared, *ex parte*, before Visiting Master Judge Brian Fischer seeking an order granting TDFPS Temporary Managing Conservatorship of Mason and Charlotte Bright.

B. ON SEPTEMBER 19, 2018, TDFPS KNOWINGLY FILED A GROUNDLESS PETITION FOR PROTECTION OF A CHILD FOR CONSERVATORSHIP AND FOR TERMINATION IN SUIT AFFECTING THE PARENT CHILD RELATIONSHIP AND MADE NO CLAIM THAT THE PLEADING WAS WARRANTED TO CHANGE OR MODIFY EXISTING LAW.

- 1) The *Original Petition for Protection of a Child for Conservatorship and for Termination in Suit Affecting the Parent-Child Relationship* filed on September 19, 2018, states “the child the subject of this suit was taken into the possession of the Department in compliance with Sec. 262.101, Texas Family Code” and alleges that

“There is an immediate danger to the physical health or safety of the children, ... Continuation in the home would be contrary to the children’s welfare. There is no time consistent with the physical health or safety of the children for a full adversary hearing, and reasonable efforts, consistent with the circumstances and providing for the safety of the children were made to prevent or eliminate the need for removal of the children.”
- 2) At the time of the removal and at the time the pleading was prepared and filed, TDFPS had direct knowledge through their own investigation of the facts and the childrens’ circumstances at the time.
- 3) The sworn affidavit that accompanied and is incorporated into the *Original Petition for Protection of a Child for Conservatorship and for Termination in Suit Affecting the Parent-Child Relationship* contains no information indicating any imminent danger to either child on September 19, 2018.

- 4) Jones testified he had a copy of the signed order removal the Bright children by 12:30 p.m. on September 19, 2018.
- 5) Jones testified he waited until after 7:30 p.m. to effectuate the removal of the Bright children.
- 6) TDFPS later admitted that there was no danger to either child at the time they were removed on September 19, 2018.
- 7) The *Original Petition for Protection of a Child for Conservatorship and for Termination in Suit Affecting the Parent-Child Relationship* filed on September 19, 2018, alleges that reasonable efforts were made to prevent removal.
- 8) There were no reasonable efforts made on September 19, 2018, to prevent the Bright children's removal or placement into a foster home.
- 9) At the time of the removal, the Brights asked what they could do to prevent the children from being taken.
- 10) Deloris Jester was present during the removal of the children and requested the children be allowed to be placed into her home. Jones declined.
- 11) Edwards testified she believes TDFPS made a mistake in not placing the children with the Fraziers on the night of the removal.
- 12) TDFPS inexplicably placed the children in not only in foster homes, but in separate foster care placements, late in the night on September 19, 2018.
- 13) Jones failed to provide the Brights with a notice of removal as required by Texas Family Code section 262.109 nor a copy of the removal order. Jones did not provide the notice of removal until after 12 p.m. on September 21, 2018, and only after the lawyer for Melissa Bright requested a copy of the document.
- 14) The children were placed in the Jester home on September 22, 2018, after 5p.m.
- 15) Upon placement of the children with the Jesters, it was discovered that Charlotte had "acidic" burns on her diaper area, and also that she had a large red mark with bruising around her left eye.
- 16) TDFPS could not explain the injuries to Charlotte. But for the illegal, fraudulent, and unreasonable acts of TDFPS, Charlotte would not have sustained such injuries or the trauma of removal, the latter being evident by recordings played to the court in the adversary hearing.

- 17) A mediation was held on September 25, 2018 with the Brights and TDFPS. At the mediation, the Brights offered that if TDFPS would dismiss their lawsuit and return the children to them, they would not seek sanctions against the agency. The agency had a chance to avoid sanctions but chose to force the Brights to accrue otherwise unnecessary legal, expert witness, and other expenses.
- 18) The Brights, through Melissa's counsel provided their evidence to TDFPS so that the offer could be fully evaluated and contemplated by TDFPS. The offer remained open until TDFPS began the show cause hearing on October 3, 2018.
- 19) TDFPS did not claim that the relief they sought in their *Original Petition for Protection of a Child for Conservatorship and for Termination in Suit Affecting the Parent-Child Relationship* was warranted by a good faith argument for the extension, modification or reversal of Section 262.101 of the Texas Family Code.

C. TDFPS KNOWINGLY MISLED THE COURT WITH STATEMENTS IN THE CASEWORKER'S SWORN AFFIDAVIT AND WITH SWORN TESTIMONY AT THE SEPTEMBER 19, 2018 EX PARTE HEARING.

- 1) Lavarvia Jones prepared the affidavit and testified for TDFPS on September 19, 2018.
- 2) TDFPS failed to disclose to the court the critical fact that the children had been home with the parents since August 28, 2018.
- 3) TDFPS failed to disclose to the court the critical fact that it had no contact with the Bright family for 22 days prior to removal of the children.
- 4) TDFPS failed to disclose to the court the critical that it had not seen the children in person for 35 days prior to removal.
- 5) TDFPS failed to disclose to the Court the critical fact that hematology reports contained in the TDFPS file showed Mason had a blood disorder that explained his excessive bleeding.
- 6) TDFPS admitted to implying to the court in the sworn affidavit that doctors had reviewed the prior physicians statement dated July 23, 2018, and still believed Mason was abused on the date of removal.
- 7) TDFPS admitted that no physician had reviewed the medical records of Mason in over 60 days prior to removal, and that TDFPS had never asked a physician to review them.

- 8) TDFPS intentionally and with no credible or valid reason, failed to notify the Brights of the *ex parte* emergency hearing on September 19, 2018.
- 9) The Brights credibly testified that had they known about the hearing on September 19, 2018, they would have attended.
- 10) Had the court been made aware of the above facts (specifically 3-7), it would have neither granted conservatorship to TDFPS on September 19 2018, nor set the case for an adversary hearing. Nor would the Brights have had to hire counsel or expend any further time or money.
- 11) TDFPS intentionally mislead the court by stating that Melissa Bright had been told the PCSP change request was denied on August 20, 2018 and the reasons for the denial.
- 12) TDFPS intentionally refused to answer questions during the adversary hearing about discrepancies in the sworn removal affidavit and testimony proffered during the *ex parte* hearing.
- 13) TDFPS investigator Jones invoked his Fifth Amendment right not to incriminate himself criminally when asked why his testimony about knowing the Bright children had been at home since August was different from his sworn affidavit. It can be inferred from the context of Mr. Jones's other testimony that he invoked his Fifth Amendment at the adversary hearing to avoid admitting to prior perjury.

D. THE FOLLOWING ACTIONS TAKEN BY TDFPS EXCEED SIMPLE BAD JUDGMENT OR NEGLIGENCE, AND EACH, TAKEN INDIVIDUALLY, DEMONSTRATES THE CONSCIOUS DOING OF A WRONG FOR DISHONEST, DISCRIMINATORY, OR MALICIOUS PURPOSES:

- 1) Knowingly filing a groundless lawsuit when TDFPS had direct knowledge of the circumstances that existed regarding the children at the time they were removed;
- 2) Intentionally making dishonest statements the Court during the September 19, 2018 *ex parte* hearing regarding the timeframe of when TDFPS found out the children returned home with the Brights;
- 3) Intentionally misleading the Court in the sworn affidavit that accompanied the petition that Melissa Bright had been told the PCSP change to the Jester home was not approved.
- 4) Consciously, intentionally and in bad faith failing to inform the Brights about the *ex parte* hearing on September 19, 2018.

- 5) Intentionally omitting from the caseworker's sworn affidavit that TDFPS knew the children had returned home with the Brights on August 28, 2018.
- 6) Intentionally making a false statement in the caseworker's sworn affidavit that there is no evidence of hematology issues that would explain Mason's injuries.
- 7) Intentionally omitting from the caseworker's sworn affidavit that TDFPS had been provided Mason's hematology test results.
- 8) Intentionally omitting from the caseworker's sworn affidavit that the hematology reports showed Mason does have a blood disorder that explains the excessive bleeding in Mason's skull.
- 9) Omitting from the sworn affidavit that TDFPS had not seen the children in 35 days prior to removal;
- 10) Omitting from the sworn affidavit that TDFPS had no contact with the Bright family for 22 days prior to removal;
- 11) Failing to conduct a reasonable inquiry and relying on information allegedly provided by a hospital social worker to conclude the injuries were abusive; and
- 12) Intentionally waiting until after business hours to remove the children when sufficient time existed to remove them after obtaining the removal order.

E. THE FOLLOWING ACTIONS TAKEN BY TDFPS EXCEED SIMPLE BAD JUDGMENT OR NEGLIGENCE, AND EACH, TAKEN INDIVIDUALLY, DEMONSTRATES THE CONSCIOUS DOING OF A WRONG FOR DISCRIMINATORY PURPOSES:

- 1) Knowingly filing a groundless lawsuit when TDFPS had direct knowledge of the circumstances that existed regarding the children at the time they were removed;
- 2) Intentionally making dishonest statements the Court during the September 19, 2018 ex-parte hearing regarding the timeframe of when TDFPS found out the children returned home with the Brights;
- 3) Intentionally misleading the Court in the sworn affidavit that accompanied the petition that Melissa Bright had been told the PCSP change to the Jester home was not approved.

- 4) Consciously failing to inform the Brights about the *ex parte* hearing on September 19, 2018.
- 5) Intentionally omitting from the caseworker's sworn affidavit that TDFPS knew the children had returned home with the Brights on August 28, 2018.
- 6) Intentionally making a false statement in the caseworker's sworn affidavit that there is no evidence of hematology issues that would explain Mason's injuries.
- 7) Intentionally omitting from the caseworker's sworn affidavit that TDFPS had been provided Mason's hematology test results.
- 8) Intentionally omitting from the caseworker's sworn affidavit that the hematology reports showed Mason does have a blood disorder that explains the excessive bleeding in Mason's skull.
- 9) Omitting from the sworn affidavit that TDFPS had not seen the children in 35 days prior to removal;
- 10) Omitting from the sworn affidavit that TDFPS had no contact with the Bright family for 22 days prior to removal;
- 11) Failing to conduct a reasonable inquiry and relying on information allegedly provided by a hospital social worker to conclude the injuries were abusive; and
- 12) Intentionally waiting until after business hours to remove the children when sufficient time existed to remove them after obtaining the removal order.

F. THE FOLLOWING ACTIONS TAKEN BY TDFPS EXCEED SIMPLE BAD JUDGMENT OR NEGLIGENCE, AND EACH, TAKEN INDIVIDUALLY, DEMONSTRATES THE CONSCIOUS DOING OF A WRONG FOR MALICIOUS PURPOSES:

- 1) Knowingly filing a groundless lawsuit when TDFPS had direct knowledge of the circumstances that existed regarding the children at the time they were removed;
- 2) Intentionally making dishonest statements the Court during the September 19, 2018 *ex parte* hearing regarding the timeframe of when TDFPS found out the children returned home with the Brights;
- 3) Intentionally misleading the Court in the sworn affidavit that accompanied the

petition that Melissa Bright had been told the PCSP change to the Jester home was not approved.

- 4) Consciously failing to inform the Brights about the ex-parte hearing on September 19, 2018.
- 5) Intentionally omitting from the caseworker's sworn affidavit that TDFPS knew the children had returned home with the Brights on August 28, 2018.
- 6) Intentionally making a false statement in the caseworker's sworn affidavit that there is no evidence of hematology issues that would explain Mason's injuries.
- 7) Intentionally omitting from the caseworker's sworn affidavit that TDFPS had been provided Mason's hematology test results.
- 8) Intentionally omitting from the caseworker's sworn affidavit that the hematology reports showed Mason does have a blood disorder that explains the excessive bleeding in Mason's skull.
- 9) Omitting from the sworn affidavit that TDFPS had not seen the children in 35 days prior to removal;
- 10) Omitting from the sworn affidavit that TDFPS had no contact with the Bright family for 22 days prior to removal;
- 11) Failing to conduct a reasonable inquiry and relying on information allegedly provided by a hospital social worker to conclude the injuries were abusive; and
- 12) Intentionally waiting until after business hours to remove the children when sufficient time existed to remove them after obtaining the removal order.

G. ATTORNEYS FEES AND COSTS DIRECTLY RELATED TO RULE 13 VIOLATIONS OF TDFPS

- 1) The Court FINDS that Melissa Bright and Michael Bright expended attorney's fees solely as a result of TDFPS's dishonest and bad faith conduct.
- 2) The Court FINDS that Melissa Bright expended \$56,781.00 in attorney's fees solely as a result of TDFPS's dishonest and bad faith conduct.
- 3) The Court FINDS that Melissa Bright's attorney's fees of \$56,781.00 are reasonable and necessary and but for the dishonest and bad faith conduct of TDFPS would not have been incurred.

- 4) The Court FINDS that Michael Bright expended \$42,459.13 in attorney's fees solely as a result of TDFPS's dishonest and bad faith conduct.
- 5) The Court FINDS that Michael Bright's attorney's fees of \$42,459.13 are reasonable and necessary and but for the dishonest and bad faith conduct of TDFPS would not have been incurred.
- 6) The Court FINDS that Melissa Bright reasonably expended \$5,014.35 in costs associated with defending herself from the dishonest and unnecessary cause of action filed by TDFPS.
- 7) The Court FINDS that Melissa Bright reasonably expended \$11,077.91 in costs associated with hiring Lisa McCartney as an expert witness to defend herself from the dishonest and unnecessary cause of action filed by TDFPS.
- 8) The Court FINDS that Michael Bright reasonably expended \$965.00 in costs associated for outside-of-network medical care of Charlotte at the direction of TDFPS, when no emergency existed.
- 9) The Court FINDS that Michael Bright reasonably expended \$1,540.00 in childcare costs that were incurred only due to TDFPS filing this dishonest and unnecessary cause of action.
- 10) The Court FINDS that Michael Bright lost \$9,720 in wages due directly to missing work because TDFPS initially filed this dishonest and unnecessary cause of action and forced the Brights to endure an adversary hearing also prosecuted in bad faith.

III. CONCLUSIONS

- 1) Based on the record, the arguments of counsel and the Court's findings there were no facts that justified removal under 262.201(b) (1) (2) or (3) of the Texas Family Code;
- 2) Based on the record, the arguments of counsel and the Court's findings there was no credible evidence presented that there was an urgent need for protection requiring the immediate removal of the children or for TDFPS to be appointed temporary managing conservator;
- 3) Based on the record, the arguments of counsel and the Court's findings there was no credible evidence presented that TDFPS made reasonable efforts to eliminate or prevent the removal of the Bright children;
- 4) Based on the record, the arguments of counsel and the Court's findings there was no

evidence presented that TDFPS made reasonable efforts to enable the children to return home;

- 5) Based on the record, the arguments of counsel and the Court's findings the evidence presented showed that TDFPS was unreasonable in their efforts to enable the children to return home
- 6) Based on the record, the arguments of counsel and the Court's findings, TDFPS deliberately misled the Court in the caseworkers removal affidavit.
- 7) Based on the record, the arguments of counsel and the Court's findings, TDFPS deliberately misled the Court in the *ex parte* removal hearing held on September 19, 2018.
- 8) Based on the record, the arguments of counsel and the Court's findings, good cause exists to find that TDFPS has abused the legal process by removing children based on false representations to the Court and failing to comply with the statutory requirements of Chapter 262 of the Texas Family Code.
- 9) TDFPS has caused Melissa and Michael Bright and the taxpayers of the State of Texas to expend unwarranted time, effort and expense on a groundless cause of action against the Brights.
- 10) In skipping vital steps mandated by our law to protect the rights of parents, the safety of children, and the integrity of the judicial system, TDFPS has needlessly wasted the parties' and this Court's time and has caused the unnecessary expenditure of taxpayer and private citizen funds.
- 11) TDFPS's actions have needlessly increased the cost of litigation by filing pleadings that included misstatements of fact, material omissions, as well as claims that were either frivolous or not warranted by existing law.
- 12) Rule 13 provides no "best interest of the children defense" nor any "best interest of the child" exception that would allow a party in bad faith to interfere with the fundamental rights of parents.
- 13) TDFPS's actions on September 19, 2018, both verbally and in writing demonstrate a willingness to mislead this Court in violation of their duty of candor and in violation of the oath they swore to "demean themselves honestly."
- 1) TDFPS's actions deprived this Court of the ability to properly exercise its duties under Texas Family Code 262.101.
- 2) TDFPS actions on September 19, 2018 significantly interfered with the legitimate

exercise of the traditional core functions of this Court.

3) TDFPS's intentional and offensive conduct on September 19, 2018 adversely affected the resources available to this Court to address the needs of other cases.

4) The sanctions in this Order are necessary to ensure respect for the enforcement of the lawful orders of this Court, this Court's ability to administer justice, and to ensure that this Court's proceedings are conducted with dignity and in an orderly and expeditious manner.

5) These sanctions are reasonable to enforce the trial court judge's control over all court proceedings, the administration of justice and to ensure that justice is done without undue delay.

6) The sanctions in this Order are issued pursuant to Melissa Bright's and Michael Bright's Motions for Sanctions under Rule 13 of the Texas Rules of Civil Procedure.

7) The sanctions in this Order are issued pursuant to the Court's inherent authority to sanction bad faith conduct during litigation pursuant to violations of the Texas Rules of Civil Procedure.

8) The monetary sanctions against TDFPS are reasonable and just and assessed in relation to the expenses, time, and abuse of judicial process caused by their conduct.

9) These sanctions have a direct relationship to the offensive conduct of TDFPS and are assessed against the actual offender, TDFPS.

10) These sanctions are designed to educate and to deter further violations by TDFPS and to attempt to make whole the victims of such offenses, the Bright family.

11) In issuing this Order, the Court has imposed a punishment appropriate to the offenses committed. The punishment is no more severe than is necessary to satisfy the legitimate purposes of the sanctions.

12) Less stringent sanctions are not appropriate, will not remedy the needless financial burdens accrued by the Brights, and will not deter TDFPS's conduct.

ORDER

For the foregoing reasons, the Court hereby ORDERS the following sanctions:

1) The Court ORDERS TDFPS to reimburse Melissa Brights's attorneys fees, costs and costs of the expert witness in the amount of \$ 72,873.26. These fees are to be paid to

Dennis Slate, at 112 E. Forrest Lane, Deer Park, Texas 77536 within fourteen (14) days of this Order.

- 2) The Court ORDERS TDFPS to reimburse Michael Bright's attorneys fees, costs and lost wages in the amount of \$ 54,684.13. These fees are to be paid to Stephanie Proffitt, at 917 Franklin St. Houston Texas 77002 within fourteen (14) days of this Order.
- 3) The Court ORDERS TDFPS to file with this Court proof that such attorney's fees have been paid no later than twenty (20) days of this Order.
- 4) If TDFPS unsuccessfully seeks intermediate appellate review of this Order, the Court ORDERS TDFPS to pay reasonable and necessary attorney's fees of \$20,000 to Melissa Bright.
- 5) If TDFPS unsuccessfully seeks intermediate appellate review of this Order, the Court ORDERS TDFPS to pay reasonable and necessary attorney's fees of \$20,000 to Michael Bright.
- 6) If TDFPS unsuccessfully seeks appellate review of this Order to the Texas Supreme Court, the Court ORDERS TDFPS to pay reasonable and necessary attorney's fees of \$20,000 to Melissa Bright.
- 7) If TDFPS unsuccessfully seeks intermediate appellate review of this Order, the Court ORDERS TDFPS to pay reasonable and necessary attorney's fees of \$20,000 to Michael Bright.
- 8) If TDFPS makes any finding of a "reason to believe" against Melissa Bright, who then is successful in an appeal of that findings by changing the finding to either "unable to determine" or "ruled out," then TDFPS is ordered to pay to Melissa Bright \$5,000.00 as reasonable and necessary attorney's fees.
- 9) If TDFPS makes any finding of a "reason to believe" against Michael Bright, who then is successful in an appeal of that findings by changing the finding to either "unable to determine" or "ruled out," then TDFPS is ordered to pay to Michael Bright \$5,000.00 as reasonable and necessary attorney's fees.
- 10) The Court ORDERS TDFPS to develop a training program that will educate all investigative workers, investigative supervisors, investigative program directors, and investigative program administrators on all aspect of the investigative process, including but not limited to the legal requirements for before and after removal of children, the fundamental rights of parents to raise their children without

governmental interference, the requirements of truthfulness and honesty to the Courts, the need to provide parents notice of ex-parte removal hearings unless circumstances justify waiver, and the necessity of full candor of the facts and circumstances of the children and parents in the removal affidavit to allow the Courts a full understanding of the need to impair the parents fundamental rights.

- 11) The Court ORDERS TDFPS to attend a hearing set of December 3, 2018 at 9:30 a.m. to provide the Court, the Brights, and their attorneys full details of the proposed training program. If in the view of the Court, or upon proper objection of the Brights the proposed training program fails to meet the expectations of the Court, the Court will provide its own details for the training.
- 12) The Court ORDERS TDFPS to complete the training requirements of this program no later than December 27, 2018, and to file with this Court and provide a copy to counsel for the Brights, proof of the completion of the training program.

This Order is effective immediately and shall remain in effect until further orders of this Court or subsequent orders of an appellate court.

November 20, 2018
DATE



JUDGE MIKE SCHNEIDER
315TH DISTRICT COURT